

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>EASTERN</u>
Name <u>KENNETH J. WEST</u>	Prisoner No. <u>BH0941</u>	Case No. <u>1:22-CV-00172-BAK</u>
Place of Confinement <u>CENTINELA STATE PRISON</u> <u>PO BOX 931</u> <u>IMPERIAL, CA. 92251</u>		<u>"FIRST AMENDED PETITION"</u>
Name of Petitioner (include name under which convicted) <u>KENNETH J. WEST</u>		Name of Respondent (authorized person having custody of petitioner) <u>ATTORNEY GENERAL OF THE</u> <u>STATE OF CALIFORNIA.</u>
The Attorney General of the State of: <u>CALIFORNIA</u>		

PETITION

1. Name and location of court which entered the judgment of conviction under attack SUPERIOR COURT
OF CALIFORNIA, County of FRESNO, 1100 VANNESS AVE FRESNO, CA 93724
2. Date of judgment of conviction MAY 21, 2018 CASE # F15904838
3. Length of sentence 165 YEARS TO LIFE
4. Nature of offense involved (all counts) _____
288(A) COUNTS 1, 2, 4-13 COUNTS 1 & 2 ON CV3
288(C) COUNTS 14 & 16 COUNTS 4-9 ON CV2
= 13 COUNTS IN ALL COUNTS 10-12 & 14, 16 ON CV1
5. What was your plea? (Check one)

(a) Not guilty ☒

(b) Guilty ☐

(c) Nolo contendere ☐

FILED

MAR 15 2022

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY gmc
DEPUTY CLERK

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
N/A
6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☒

(b) Judge only ☐

RECEIVED

MAR 15 2022

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY [Signature]
DEPUTY CLERK
7. Did you testify at the trial?
Yes ☒ No ☐
8. Did you appeal from the judgment of conviction?
Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court COURT OF APPEAL, FIFTH APPELLATE DISTRICT
 (b) Result DENIED CASE # F077999
 (c) Date of result and citation, if known NOT KNOWN DEC 2020
 (d) Grounds raised IN-EFFECTIVE TRIAL COUNCIL AND
CROSS SENTENCING AND STATUE OF LIMITATIONS

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court SUPREME COURT OF CALIFORNIA
 (2) Result PETITION FOR REVIEW DENIED
CASE # F077999
 (3) Date of result and citation, if known FEB 24, 2021
 (4) Grounds raised IN-EFFECTIVE TRIAL COUNCIL AND
CROSS SENTENCING AND STATUE OF LIMITATIONS

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court N/A
 (2) Result N/A
 (3) Date of result and citation, if known N/A
 (4) Grounds raised N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court N/A
 (2) Nature of proceeding N/A
 (3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result N/A

(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Name of proceeding N/A

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: DENIAL OF EFFECTIVE ASSISTANCE OF COUNCIL
DENIAL OF MY CONSTITUTIONAL 10TH AMENDMENT RIGHT.

Supporting FACTS (state *briefly* without citing cases or law): _____

PLEASE SEE ATTACHMENT 1A

B. Ground two: GROSS & UNFAIR SENTENCE IMPOSED BY COURT.
DENIAL OF MY CONSTITUTIONAL 8TH AMENDMENT RIGHT.

Supporting FACTS (state *briefly* without citing cases or law): COURT DID NOT USE ITS OWN DISCRETION
@ SENTENCING. COURT FOLLOWED RECOMMENDATION OF PROBATION DEPT. REPORT
WHERE I SCORED 0 ON STATIC 99R. COURT IMPOSED OVERRIDE OF
STATE OF ILLINOIS ON COUNTS 1 & 2 ON CIV3, 4-9 ON CIV4.
COURT IMPOSED INHANCEMENTS ON COUNTS 1 & 2, 4-12 ACCORDING TO
610 ILCS 1. COURT IMPOSED UNAFFORDABLE BAIL OF \$1,875,000.00
& RESTITUTION FINE OF \$20,000.00. BEING ABLE TO KEEP
WORKING AND PAY FOR MY OWN COUNCIL WOULD HAVE CHANGED OUTCOME.

ATTACHMENT 1A

3/3/22

GROUND #1 DENIAL OF EFFECTIVE ASSISTANCE OF COUNCIL,
DENIAL OF MY CONSTITUTIONAL 6TH AMENDMENT RIGHT.

- FACTS:
- COUNCIL REFUSED TO SUPOENA WITNESSES IMPORTANT TO DEFENSE (WITNESSES MENTIONED IN POLICE REPORTS)
 - COUNCIL CALLED OFF WITNESSES SET TO TESTIFY IN THE MIDDLE OF TRIAL INCLUDING MY INVESTIGATOR & MY WIFE.
 - COUNCIL REFUSED TO IMPEACH WITNESS THAT IS A 2 STRIKE FELON & CHARGED WITH DUI HIT & RUN BEFORE TRIAL. COUNCIL ALSO REFUSED TO ENTER PICTURE EVIDENCE THAT WOULD DISCREDIT WITNESSES CHARACTER.
 - COUNCIL REFUSED TO USE 2 INVESTIGATOR REPORTS IN DEFENSES FAVOR.
 - COUNCIL INSTRUCTED WITNESS FOR DEFENSE & MYSELF NOT TO TESTIFY ABOUT KEY POINTS THAT WOULD HAVE CHANGED OUTCOME OF TRIAL
 - COUNCIL REFUSED TO OBJECT TO SENTENCE OR RESTITUTION IMPOSED.
 - COUNCIL REFUSED TO BRING BACK PROSECUTION WITNESSES THAT WERE EXCUSED FROM COMING BACK AFTER THEIR INITIAL TESTIMONY THAT DISCREDITS OTHER PROSECUTION WITNESSES AND POLICE REPORTS AND TESTIMONY DISCREPENCIES WERE NOT ADDRESSED TO THE JURY.
 - I ENTERED 2 MARSDEN MOTIONS ON COUNCIL & DENIED
 - BAR ASSC. COMPLAINT #18-22014 7/18 DENIED

C. Ground three: DENIAL TO MY CONSTITUTIONAL RIGHTS ACCORDING TO 14TH AMENDMENT
DEED OF EQUAL PROTECTION UNDER THE LAW.

Supporting FACTS (state briefly without citing cases or law): THIS CASE WAS FOUNDED
ON NO EVIDANCE SCIENTIFIC, NO EYE WITNESSES OR
OTHERWISE TO SUPPORT ANY OF THE ALLEGED COMPLAINTS.
THESE ALLEGATIONS SPAN OVER A DECADE THAT SUPPOSEDLY
WENT ALLEGEDLY UNDETECTED IN ANY WAY SHAPE OR FORM
BUT YET I AM SERVING 165 YEARS TO LIFE FOR A CRIME I
DID NOT COMMIT I ASK TO OVERTURN THIS CASE IN THE

D. ~~Ground four~~ INTEREST OF JUSTICE ON A CASE WITH NO EVIDANCE.

Supporting FACTS (state briefly without citing cases or law): I FEEL WITH ALL THESE
FACTS I DID NOT RECEIVE A FAIR TRIAL AND I AM
INITIALED TO ONE UNDER THE CONSTITUTION.

PLEASE SEE ATTACHMENT 2A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (a) At preliminary hearing SCOTT BALLY, COUNTY OF FRESNO PUBLIC DEFENDERS
OFFICE, 2135 FRESNO ST, SUITE 100 FRESNO, CA. 93721-1718
- (b) At arraignment and plea SCOTT BALLY, COUNTY OF FRESNO PUBLIC DEFENDERS
OFFICE, 2135 FRESNO ST, SUITE 100 FRESNO, CA. 93721-1718

TRANSCRIPT

Judge Brian Alvarez Dept 20 in Fresno ca. page 204 on [REDACTED] from superior court. He said I did tell counsel and I want to make it clear for the record, that I wont be here after May 23rd. I have pre-arranged out of state travel plans that I have to keep. So please lets conclude this by the 23rd. I can tell the jury that at least and this would be most beneficial, at least to the court anyway.

So is this why witnesses on my behalf which I was told would testify only 3 got to testify. 7 others could have been called in to testify on facts and were on the potential witness list that were not called in. Why? Because we were on a time limit for this case ?

James Corey testified he spoke to me at a park the day these accusations were made. He said I admitted to him I did it. I NEVER spoke to James not that day or any other day. I spoke to no one but my wife after I was accused. I told Scot Baly and he did nothing to prove I didnt talk to him. My wife could have told that I did not speak to him because she was there at the park. Scot Baly said my wife would not make a good witness, but she knew the Facts.

Why did Scott Baly tell me my wife should sell her stuff in storage and get on with her life before I went to trial. Isnt that him saying my own defense attorney telling me I am going to lose my case before it started?

So the judge asking for it to be over by the 23rd of May for vacation. I was found guilty May 21st 2018.

Thank You,
Respectfully,
Kenneth A West
KENNETH J. WEST #BH0941

- (c) At trial SCOTT BALY, COUNTY OF FRESNO PUBLIC DEFENDERS OFFICE
2135 FRESNO ST. SUITE 100 FRESNO, CA. 93721-1718
- (d) At sentencing SCOTT BALY, COUNTY OF FRESNO PUBLIC DEFENDERS OFFICE
2135 FRESNO ST. SUITE 100 FRESNO, CA. 93721-1718
- (e) On appeal STEPHEN LATHROP, ATTORNEY-LAW OFFICES OF LATHROP
& VILLA, 904 SILVER SPUR RD #430 ROLLING HILLS ESTATES, CA
90274
- (f) In any post-conviction proceeding N/A
- (g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3/3/22
 Date


 Signature of Petitioner